NOT-FOR-PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NOS. 94-1839 and 94-1869

RUTH J. KUHNS; BLAKE C. HEFFNER;
WILLIAM W. SHELLHAMMER, an behalf of
themselves and all others similarly situated

v.

MERIDIAN BANCORP, INC., successor to
THE FIRST NATIONAL BANK OF ALLENTOWN

Ruth J. Kuhns, Blake C. Heffner and
William W. Shellhammer, for themselves
and as representatives of the Plaintiff
Class, Appellants in No. 94-1839

RUTH J. KUHNS; BLAKE C. HEFFNER;
WILLIAM W. SHELLHAMMER, on behalf of
themselves and all others similarly situated

v.

MERIDIAN BANCORP, INC., successor to the
FIRST NATIONAL BANK OF ALLENTOWN

Meridian Bancorp, Inc., successor to the
First National Bank of Allentown,
Appellant in No. 94-1869

On Appeal From the United States District Court
For the Eastern District of Pennsylvania
D.C. Civ. No. 92-cv-04065
District Judge: Honorable Edward N. Cahn, Chief Judge

Argued: July 26, 1995

Before: BECKER, NYGAARD, and ALITO,
Circuit Judges

(Filed September 8 - 1995)

OPINION OF THE COURT

BECKER, Circuit Judge,

Plaintiffs, Ruth J. Kuhns, Blake Heffner and William W. Shellhammer, have appealed from a judgment of the district court granting summary judgment for defendant, Meridian Bancorp, Inc. ("Meridian"), on certain state law and ERISA claims brought against Meridian by plaintiffs on their own behalf and on behalf of a class of others similarly situated. More particularly, the district court held that the plaintiffs' state law claims were barred by laches and that their ERISA claims were barred, in part, by the statute of limitations. After a bench trial, the court held that plaintiffs were not entitled to both a retirement benefit and a profit sharing benefit as they claimed, but determined that the benefits to which they were entitled should be recalculated using an interest rate of 7.4%. This was because of the district court's view that the 4% interest rate provided in the defined benefit plan was too low. Meridian has cross-appealed from the court's failure to bar all of the plaintiffs' untimely claims, its refusal to apply ERISA's non-retroactivity provisions, and its imposition of a 7.4% interest rate. On the plaintiffs' appeal, we affirm; on Meridian's appeal, we reverse.

I

The etiology of plaintiffs' cause of action is the decision made way back in 1970 by the First National Bank of Allentown, Meridian's predecessor, concerning its employee benefits package. At that time, the bank switched from a defined contribution (profit sharing) plan to a defined benefit plan (the changes were effectuated in 1971). In adopting this change in plans, the company attempted to preserve the account balances of plan participants (at the time of the change in plans) by offering a choice to retiring employees between participation in the defined benefit plan or their 1971 account balance compounded to the date of their retirement at an annual rate of return of 4%.[4] This offer was instituted for all bank employees (including all the plaintiffs in this action) and detailed information about the plan was provided to all the plaintiffs in 1971. In 1981, the defendant raised the percentage to 5% retroactive to 1/1/76. The defined benefit plan was established to replace (not supplement) the profit sharing plan, which, in the bank's judgment, had provided inadequate benefits for the bank's employees. Notwithstanding this fact, and the fact that all the bank's employees were notified of the changes (and that one of the plaintiffs, Mr. Shellhammer, was a "key player" in

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[4] More precisely, the defined benefit plan provided a retirement benefit equal to the "greater of" (a) a defined benefit based on the employees' total years of service (including service before the profit sharing plan existed) and the employees' final average pay before retirement; or (b) a lifetime annuity based on the value of the employees' account balances in the now-replaced profit sharing plan compounded at a rate of 4% interest.

connection therewith,[5] it was not until 1991, over twenty years after the 1970 bank action, that these plaintiffs brought the present lawsuit in which they claim that they

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[5] Shellhammer attended the meeting of the pension trustees on November 21, 1970, where Beyer-Barber, a consulting firm retained by the bank, recommended to the plan trustees to convert their Profit Sharing plan to a defined benefit pension plan. Indeed, Shellhammer presented the trustees' recommendations to convert the plan on December 21, 1970 to the bank's board of directors on behalf of the trustees. Additionally, on a separate occasion in 1980, the bank provided Shellhammer with pension calculations reflecting the interest rate credited to his profit sharing account. Moreover, plaintiff Heffner testified that he complained about the transaction as early as 1971, but decided it was not in his "best interest" to pursue it at the time. Finally, plaintiff Kuhns retained counsel in 1986 and through counsel raised many of these issues with the bank at that time: like the other bank employees, she was given detailed information about the transaction in 1971. More specifically (on the latter point), the transaction involving the Pension Plan and its use of the Profit Sharing Plan's assets was announced in an employee news bulletin and explained by Shellhammer and others at employee meetings. It was described in the Bank's 1971 Annual Report and at the annual shareholders' meeting, where Shellhammer was designated to answer questions. A benefit booklet was distributed to all employees explaining how the Profit Sharing Plan's assets would receive be used as partial funding for the benefits under the new plan. The employees were also told they would receive only one retirement benefit, not two.

are entitled to both the enhanced defined benefit and the profit sharing benefit it replaced. Indeed, plaintiffs allege repeatedly in their brief that the bank "embezzled" their money. This allegation is patently false, and is symptomatic of the failings of their lawsuit.[6]

We need not recount in great detail either the additional factual background or procedural history of this case, since it is well known to the parties. Additionally, we do not discuss those aspects of this case in which plaintiffs' claims were rejected by the district court, for in those respects we affirm essentially for the reasons set forth in its opinions.[7] Rather, we limit our discussion to the issues raised in the cross-appeal.

II

While dismissing all but Shellhammer's claim on statute of limitations grounds, *see infra*, the district court concluded that the plaintiffs' claims were viable as to the amount of their monthly pension checks

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[6] Neither, despite the vigor into which it is advocated, have the plaintiffs made a colorable showing that the transaction, to the extent that it had to be approved by the Internal Revenue Service, was not in fact approved. The delay in bringing this action has contributed to the uncertainty in this area, for many of the relevant documents have been lost or discarded.

[7] We reject Meridian's contention, however, that plaintiffs waived their right to appeal the district court's dismissal of their state law claims.

received within ERISA's three year statute of limitations.[8] For instance, since this case was brought on July 13, 1992, Kuhns could, in the district court's view, recover for the interest rate differential attributable to all pension payments made after July 13, 1989 (the date before which such claims would be barred by the applicable three year statute of limitations of ERISA §1113).

In reaching this conclusion the district court incorrectly relied on the "continuing violation" rationale of the Ninth Circuit opinion in *Meagher v. International Association of Machinists & Aerospace*

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[8] Section 1113 of ERISA provides:

No action may be commenced under this subchapter with respect to a fiduciary's breach of any responsibility, duty, or obligation under this part, or with respect to a violation of this part, after the earlier of

(1) six years after (A) the date of the last action which constituted a part of the breach or violation, ... or

(2) three years after the earliest date on which the plaintiff had

actual knowledge of the breach or violation;

except that in the case of fraud or concealment, such action may be commenced not later than six years after the date of discovery of such breach or violation.

Workers Pension Plan, 856 F.2d 1418 (9th Cir. 1988). In that case, the Ninth Circuit analyzed when a plan amendment phasing out a living pension feature of a company's pension plan gave rise to a cause of action under ERISA § 1054(g)(1) (which provides for a cause of action against a plan when a participant's "accrued benefits were 'decreased by an amendment.'") *Id.* at 1422 (quoting ERISA § 1054(g)(1)). In *Meagher*, the Ninth Circuit reversed the district court's "assumption that the violation in this case was the enactment or the amendment." *Id.* The court reasoned:

> Meagher's cause of action accrued only when his accrued benefits were "decreased by an amendment of the plan, other than an amendment described in section 1082(c)(8) of this title." 29 U.S.C. § 1054(g)(1). The district court suggests that passage of the inoperative amendment, or when Meagher found out the amendment was passed, was the precise accrual date. We disagree Meagher was harmed only by the wrongful application of the amendment. Only then were his accrued benefits decreased. The passage of the amendment was not a violation of ERISA . . .

856 F.2d at 1422. The result in *Meagher* emanates from the particular language of § 1054(g)(1) requiring that a participants benefits actually be "decreased" before the participant's cause of action could accrue.

In contrast, the plaintiffs' claim in this action are brought under ERISA § 1104(a), which provides that a fiduciary "shall discharge his duties with

respect to a plan solely in the interest of the participants" and ERISA § 1103(c), which provides that "the assets of the plan shall never inure to the benefit of any employer and shall be held for the exclusive purpose of providing benefits to the participants." These sections, unlike § 1054(q)(1), do not require that a participant's benefits be "decreased by an amendment to the plan." Rather, the plaintiffs in this action would have had a cause of action under these sections at any time the facts were sufficient to make out a claim that the defendant was improperly using plan assets. Facts sufficient to make out such a claim would have been available from 1971 forward, when the profit sharing plan was converted to a defined benefit plan. Thus, Shellhammer's claims is also time barred under § 1113 of ERISA.

III

The district court relied on the applicable three-year statute of limitations in § 1113 of ERISA to dismiss all but one of the plaintiffs' actions (Shellhammer's) given that all plaintiffs except Shellhammer retained counsel and raised the issues implicated in this appeal with the defendant's general counsel in 1986, more than three years before this case was brought in 1991. *See* Dist. Ct. Op. 28-32. The district court erred, however, in failing to also dismiss the claim of Shellhammer, who was a fairly high-ranking employee whose extensive involvement in the 1970 decisions is chronicled supra at n.2.

Notwithstanding Shellhammer's extensive knowledge regarding the 1970 transaction, the district court, relying on our opinion in *Gluck v. Unisys Corp.*, 960 F.2d 1168, (3d Cir. 1992), rejected the defendant's

contention that Shellhammer had "actual knowledge of a breach or violation" under ERISA § 1113(2):

> [T]his court finds that Shellhammer did not have actual knowledge of the putative breaches more than three years before the plaintiff initiated the lawsuit. Although Shellhammer attended the meetings where the trust modifications were discussed and made the presentation to the Board of Directors, he did not have the requisite knowledge that *Gluck* requires. Indeed, Shellhammer is the quintessential example of a participant who would have actual knowledge under the *Blanton* test -- he had knowledge of the underlying facts but did not have knowledge of the law. Since that test has been expressly rejected by the Third Circuit Court of Appeals, more information is needed to determine whether Shellhammer had actual knowledge.

Dist. Ct. Op. at 32. While our decision in *Gluck* is admittedly opaque, we believe the district court misreads its requirements of "actual knowledge." The district court stated:

> the [*Gluck*] court emphasized that its holding "does not mean the statute of limitations can never begin to run until a plaintiff first consults with a lawyer." This language suggests that participants who do not consult with an attorney will usually be deemed not have actual knowledge under § 1113(2) because in all

> probability they will not be aware that the transactions give rise to an ERISA violation.

Dist. Ct. Op. at 28 (citation omitted).

Analyzed properly under the language of *Gluck*, Shellhammer did have actual knowledge. In particular, he had "actual knowledge of all material facts necessary to understand that some claim exists." *Gluck*, 960 F.2d at 1177. From the outset of the transaction in 1970, Shellhammer was aware that the profit sharing accounts of participants were going to be preserved through a set percentage rate of 4%. Such knowledge constituted "knowledge of all relevant facts at least sufficient to give the plaintiff knowledge that a fiduciary duty has been breached or ERISA provision violated." *Gluck*, 960 F.2d at 1178. This is all that *Gluck* requires.

IV

The result of the foregoing discussion is that all of plaintiffs' claims must be dismissed.[9] Accordingly, we need not reach the questions, presented by the cross-appeal, whether the district court applied improper legal standards and abused its discretion in

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[9] In reversing the district court's order as to the issue raised in Meridian's cross-appeal, we need not reach Meridian's contentions that ERISA's non-retroactivity provisions bar the plaintiffs' ERISA claims and the district court erred by not dismissing the plaintiffs' ERISA claims based on laches. These contentions appear to have merit and would be alternate grounds for reversal on the cross-appeal.

selecting the 7.4% rate or erred by imposing a post-retirement interest credit. The judgment of the district court insofar it is challenged in No. 94-1839 will be affirmed, but insofar as it is challenged in 94-1869, will be reversed, and the case remanded to the district court with directions to enter judgment for the defendants on all counts.

TO THE CLERK:

Please file the foregoing opinion.

BY THE COURT:

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Circuit Judge